

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PYOTR SHMELEV,

Civil No. 11-2042 (JRT/LIB)

Petitioner,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE
MAGISTRATE JUDGE**

TOM ROY, Commissioner of
Corrections,

Respondent.

Pyotr Shmelev, #208056, Minnesota Correctional Facility, 7525 4th Avenue, Lino Lakes, MN 55014, petitioner *pro se*.

Krista Jean Guinn Fink and Brent D. Wartner, **MINNESOTA DEPARTMENT OF CORRECTIONS**, 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108; and Matthew Frank, Assistant Attorney General, **MINNESOTA ATTORNEY GENERAL'S OFFICE**, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101, for respondent.

Petitioner Pyotr Shmelev objects to the Report and Recommendation (R&R) of Magistrate Judge Leo I. Brisbois recommending that the Court deny his petition for habeas relief pursuant to 28 U.S.C. § 2254. Specifically, Shmelev argues that (1) the disciplinary hearing officer found, contrary to the evidence, that “any prison correspondence containing internet printouts could be treated as contraband regardless of absence of security risk,” (2) prison officials offended due process by failing to disclose exculpatory evidence and preventing Shmelev from calling a key witness, and (3) the

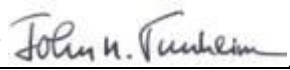
state district court violated due process by “chang[ing] the reason for the disciplinary conviction from the reason reflected in the prison hearing report.” (R&R at 2-3.) The Magistrate Judge carefully considered each of Shmelev’s constitutional arguments, (*id.* at 4-20), and Shmelev’s objections to the R&R raise no new relevant legal arguments or facts that the Magistrate Judge did not amply and ably address.¹

Based on the R&R of the Magistrate Judge, and all of the files, records and proceedings herein, the Court hereby **OVERRULES** Shmelev’s objections [Docket No. 14] and **ADOPTS** the Report and Recommendation of the Magistrate Judge dated May 22, 2012 [Docket No. 13]. **IT IS HEREBY ORDERED** that:

1. Petitioner’s application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Docket No. 1] is **DENIED**.
2. This action is **DISMISSED WITH PREJUDICE**.
3. A certificate of appealability will not issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: August 27, 2012
at Minneapolis, Minnesota.

s/ 

JOHN R. TUNHEIM
United States District Judge

¹ The Magistrate Judge found that Shmelev’s claim regarding the exculpatory evidence was procedurally defaulted, (R&R at 10-13), and the Court agrees.